

determined that his status as an armed career criminal did not affect his sentence because his offense level as a career offender was higher and therefore trumped the armed career criminal level. (Docket no. 106; PSR ¶ 25 (calculating offense level under USSG § 4B1.4(b)(2)).) Also, as a career offender his criminal history category was VI. Petitioner would still have the two prior convictions needed to qualify as a career offender even if the speeding to elude arrest conviction is nullified. (PSR ¶¶ 33, 36.) Accordingly, Petitioner's motion to reopen should be denied.

IT IS THEREFORE RECOMMENDED that Petitioner's motion to reopen his judgment (docket no. 120) be denied.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: January 12, 2006